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TAGS: [PARM](#) [KACT](#) [MARR](#) [PREL](#) [RS](#) [US](#)
SUBJECT: SFO-GVA-VIII: (U) MEETING ON PROVISIONAL APPLICATION,
FEBRUARY 23, 2010

CLASSIFIED BY: Rose A. Gottemoeller, Assistant Secretary, Department
of State, VCI; REASON: 1.4(B), (D)

[1](#)1. (U) This is SFO-GVA-VIII-078.

[1](#)2. (U) Meeting Date: February 23, 2010

Time: 3:30 P.M. - 5:30 P.M.

Place: Russian Mission, Geneva

SUMMARY

[1](#)3. (S) A meeting to discuss Part VIII of the Protocol-Provisional Application was held between Mr. Highsmith and Mr. Lobach. This was the first meeting on provisional application in the eighth round of the negotiations. In the previous session, the United States offered a draft proposal on provisional application. Russia counter-offered its own, minimalist, draft on December 15. Lobach explained the Russian approach was based on their view that a lengthy list of articles and Protocol sections to be provisionally applied would create a disincentive to prompt ratification. He reiterated Russian opposition to inspections during the provisional application period due to U.S. inability to grant privileges and immunities, and he took the position that the treaty text would not allow for updating the initial data exchange during the provision

application period. He noted agreement on provision application of the articles on: application of definitions; initial data exchange; voluntary confidence-building measures; noninterference with national technical means (NTM); and the Bilateral Consultative Commission (BCC). He expressed a willingness to consider provisional application for conversion or elimination. End summary.

¶4. (S) Subject Summary: Review of U.S.-Proposed Text; Inspections; Counting Rules; New Kind of SOA and the BCC; Conversion or Elimination; Database and Notifications; Noninterference with NTM; Nonsubstantive Changes to Protocol; Definitions; and Agreed Statements.

REVIEW OF U.S.-PROPOSED TEXT

¶5. (S) The sides reviewed a U.S.-proposed draft of Part VIII of the protocol, which was tabled in December during SFO-GVA-VII of the negotiations, in order to reach agreement on the list of provisions from the treaty and Protocol to be provisionally applied after signature, and pending entry-into-force (EIF).

¶6. (S) This U.S.-proposed text is reproduced below, with article and paragraph numbers that reflect changes in the treaty and protocol texts since the document was tabled in December.

Begin text:

The Parties agree to apply the following provisions of the Treaty and this Protocol provisionally from the date of signature of the Treaty pending the entry into force of the Treaty:

(a) Article I, Paragraph 2 of the Treaty; (Applicability of Definitions of Terms)

(b) Article III, Paragraphs 3, 4, 6 and 7 of the Treaty; (Rules Regarding Which Strategic Offensive Arms (SOA) Are Covered by the Treaty)

(c) Article V, Paragraph 2 of the Treaty; (New Kind of SOA Can Be Raised In BCC)

(d) Article VI, Paragraphs 1, 2, and 3(a) of the Treaty; (Conversion or Elimination)

(e) Article VII of the Treaty; (Database, Notification of Changes To Database, Nuclear Risk Reduction Center (NRRC), Voluntary Notifications)

(f) Article VIII of the Treaty; (Voluntary Confidence-Building

Measures)

(g) Article X, Paragraphs 1(a)-(c) and 2 of the Treaty; (NTM Noninterference and Non-Concealment)

(h) Article ((XIII))1((XII))2 of the Treaty; (BCC)

(i) Article ((XVI))1((XV))2, Paragraph 2 of the Treaty; (Changes to the Protocol Not Affecting Substantive Rights or Obligations Under the Treaty)

(j) Part One of this Protocol to the Treaty; (Definitions)

(k) Part Two of this Protocol to the Treaty; (Database)

(l) Part Three of this Protocol to the Treaty; (Conversion or Elimination)

(m) Part Four, Section I, Section II, Section III, Section IV, Section V, and Section VII of this Protocol to the Treaty; (Notifications Regarding Changes in Data, Movement of SOA, Flight Tests, Conversion or Elimination, Changes in Information)

(n) Part Six of this Protocol to the Treaty; (BCC)

(o) Part Nine of this Protocol to the Treaty; (Agreed Statements)

(p) Part XXX of this Protocol to the Treaty; and (Transparency Visits and Undertaking to Treat Personnel of the Other Party with Due Respect)

(q) Part Ten of this Protocol to the Treaty. (General)

End text.

INSPECTIONS

17. (S) Lobach reiterated the Russian position that inspections could not occur during the provisional application period due to the U.S. inability to grant privileges and immunities to Russian inspectors. Thus, Russia could not accept the U.S. proposal, which provided for transparency visits by each side and an obligation by the host country to "treat with due respect" the personnel of the other side and "take all appropriate steps to prevent any attack on the person, freedom, and dignity of such persons." Highsmith noted that the sides had discussed this issue extensively, and each

understood the other's position.

COUNTING RULES

18. (S) Highsmith presented the U.S. position that paragraphs 3, 4, 6, and 7 of Article III needed to be included because they detailed the rules that guide the content of the database. Lobach responded that he would present the U.S. position to the experts on the Russian side.

NEW KIND OF SOA AND THE BCC

19. (S) Lobach argued that the inclusion of Paragraph 2 of Article V would be redundant because both sides had already agreed to provisional application of Article ((XIV))1((XIII))2 (Bilateral Consultative Commission (BCC)), subparagraph (c) which provides that the BCC is established to "resolve questions relating to the applicability of provisions of this Treaty to a new kind of strategic offensive arm." Highsmith responded that the U.S. side would consider the Russian position. Highsmith asked Lobach if he found anything harmful in including Paragraph 2 of Article V. Lobach commented that he personally could see logic in the U.S. position to include Paragraph 2, but noted that the Russian aim for provisional application was to keep the list of provisions short. They did not want Part VIII to give the appearance that the two sides were provisionally applying the entire treaty. They believed that this would create a disincentive to proceed promptly with ratification.

CONVERSION OR ELIMINATION

10. (S) Highsmith explained the rationale for provisionally applying Paragraphs 1, 2, 3(a) of Article VI (Conversion or Elimination (CorE)) by noting that if they were not applied, the sides would be free to convert and eliminate in a way of their own choosing during the time between signature and ratification. Highsmith explained that these paragraphs were included to protect against a potential dispute arising upon EIF over whether a Party's converted or eliminated SOA was legitimately outside the scope of the treaty. Lobach mentioned he recommended to his delegation that it would be reasonable to include CorE provisions in the provisional application list. However, he said that at that time the Russian delegation was not interested in the CorE proposal. He

said he would raise the issue again, however he also noted that inclusion of the paragraphs (and the CorE part of the Protocol) would work against the Russian interest in keeping the provisional application list short. (Begin comment: The Russian desire to keep the provisional application list short was a consistent theme during the meeting. End comment.)

DATABASE AND NOTIFICATIONS

¶11. (S) Lobach said the Russian side might be able to make changes to its provisional application proposal as it related to the initial exchange of data. He noted that Paragraph 2 of Section I of Part Two provides for the initial data exchange no later than 45 days after signature and hence should be provisionally applied. Lobach also noted that, by the same logic, the Russian side might approve the inclusion of Paragraph 3 of Section 1 of Part Two, which requires the provision of certain site diagrams within 45 days after signature. Lobach concluded that Paragraphs 6, 7 and 8 regarding geographic coordinates would not be included in the Russian proposal, as geographic coordinates are specifically excluded from the initial exchange of data (paragraph 2(a)).

¶12. (S) Lobach said many questions concerning Article VII also applied to Part Two of the Protocol. He said that if the parts of Part Two requiring provision of data and site diagrams 45 days after signature were included in provisional application, then the corresponding treaty text in Article VII could also be provisionally applied. Lobach expressed uncertainty regarding Article VII in its entirety. He said Paragraph 1 might be applied (requiring establishment of the database and referring to Part Two of the Protocol). He said his personal opinion was that Paragraph 2 and Paragraph 3 (regarding notification of changes in the database) would not be provisionally applied since the Russian position was that the United States and Russia would only conduct the initial exchange of data during the provisional application period. Highsmith asked what the sides would do if the provisional application period became lengthy and the initial data became stale. Lobach seemed to register this point, but declared he was trying to proceed with caution toward provisional application. He also noted that Paragraph 1 of Section II of Part Four of the Protocol (notifications) required the Parties to provide data current as of EIF no later than 45 days after EIF. Thus, the treaty only required that the initial exchange of data be updated as of EIF, not before, so updating cannot be required during the provisional application period, which occurs entirely before EIF.

¶13. (S) Continuing with Article VII, Lobach said Paragraph 5 might be applied provisionally in order to authorize the release to the public of the initial exchange of data, and he said he would check this point with Russian experts. Lobach also said that Paragraphs 6-8 would most likely not be provisionally applied, as they were unrelated to the initial exchange of data.

¶14. (S) Lobach stated notifications should not be provisionally applied since there would be no database changes to notify. (Begin comment: The other sections of Part IV will be the topic of future discussions. The outcome will depend in part on whether the subjects to which these sections relate (e.g., CorE, new kinds of SOA) are applied provisionally. End comment.)

NONINTERFERENCE WITH NTM

¶15. (S) Lobach noted that the two sides agreed on provisional application of most of Article X, but the U.S. proposal excluded some paragraphs. Highsmith agreed to check with the U.S. delegation on these paragraphs. (Begin comment: One of the excluded paragraphs of Article X requires 48-hours notice of the

departure of solid-fueled ICBMs and SLBMs from production facilities; it was not in Article X when the United States tabled its proposed Part VIII of the Protocol. The other excluded paragraph requires unique identifiers. The U.S. position on provisional application of this paragraph will be provided to the Russian side. End comment.)

BILATERAL CONSULTATIVE COMMISSION

¶16. (S) Lobach and Highsmith agreed that Article ((XIII))1((XII))2 and Part VI of the Protocol would be provisionally applied to establish the BCC.

NONSUBSTANTIVE CHANGES TO PROTOCOL

¶17. (S) Paragraph 2 of Article ((XVI))1((XV))2 provides that the Parties may agree to changes in the Protocol "that do not affect substantive rights and obligations under the Treaty" without resorting to the treaty amendment process. Lobach raised a concern that, because the list of provisions to be provisionally applied would be part of the Protocol, the BCC would be able to agree to changes in that list and thereby expand (or contract) the scope of provisional application. He also expressed concern about the BCC

making changes to the Protocol while it was still subject to consideration by the respective legislatures. Highsmith and Lobach agreed to check with their respective sides and also to see if this provision was provisionally applied in the expired START Treaty.

DEFINITIONS

¶18. (S) Highsmith and Lobach noted that both sides had proposed to apply provisionally paragraph 2 of Article I and Part I of the Protocol, which relate to the definition of terms used in the treaty and Protocol.

AGREED STATEMENTS

¶19. (S) The sides agreed it was premature to discuss the agreed statements in Part IX of the Protocol. They agreed to revisit the statements later to determine if provisional application would be useful and appropriate.

¶20. (U) Documents provided: None.

¶21. (U) Participants:

UNITED STATES

Mr. Highsmith

Ms. Miller (RO)

RUSSIA

Mr. Lobach

Ms. Vodopolova

¶22. (U) Gottemoeller sends.
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